(1)

No. 04-739

In The Supreme Court of the United States

GERALDINE MILLS, M.D.,

Petitioner,

v.

PATRICIA A. NOLAN, M.D., M.P.H., DIRECTOR DEPARTMENT OF HEALTH,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Rhode Island

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED AND OBJECTION TO THE JURISDICTION OF THE COURT TO GRANT A PETITION FOR A WRIT OF CERTIORARI

1. Whether pursuant to the requirements of 28 U.S.C. § 1257(a) and the Rules of the Supreme Court of the United States the Petitioner has demonstrated that this Court should issue its Writ of Certiorari.

(Negative answer sought by Respondent).

The Petitioner has not met the required demonstration that the Supreme Court of the United States has jurisdiction in this matter as is shown in the "Questions" section of Petitioner's brief. The mere mention of "due process" in Petitioner's "Questions" fails to meet the test of demonstrating foundational support to justify jurisdiction for the Court to grant a Writ of Certiorari.

The Respondent objects to the questions in Petitioner's brief as they fail to state accurately a representation of all the state agency administrative proceedings or the subsequent appellate sequelae. Supreme Court Rule 14(4) states the Court's authority to deny this Petition because the Petitioner has failed to state with accuracy, brevity and clarity the questions in order to apprise the Court of the issues requiring its consideration.

Petitioner's "Questions" are devoid of requisite support for jurisdiction. The Respondent objects to these questions in their entirety as they include incorrect statements that will be discussed in "Misstatements" pursuant to Supreme Court Rule 15(2).

COUNTERSTATEMENT OF QUESTIONS PRESENTED AND OBJECTION TO THE JURISDICTION OF THE COURT TO GRANT A PETITION FOR A WRIT OF CERTIORARI – Continued

Petitioner has erroneously postulated that she has presented a federal claim to this Court. The Petitioner has failed to demonstrate that a federal claim or federal question exists.

Petitioner's "Questions" include presuppositions of incorrect and untrue factual assertions, including the misstatement that Mr. McIntyre was a member of the Board of Licensure and Discipline. Mr. McIntyre is not now and never has been a member of the Board of Licensure and Discipline.

There are also numerous factual assertions that are outside and beyond the certified record of the proceedings before the Board.

Petitioner's questions are essentially an attempt to retry the case before the Board under a false premise with a generalized use of the words "due process," and a use of misstatements of facts and material outside of the certified record below.

Petitioner's questions fail to demonstrate anything that was not exclusively cognizable under state law. In Rhode Island, hearings before administrative agencies are tried at the administrative agency level pursuant to the Rhode Island Administrative Procedures Act R.I.G.L. Chapter 42-35. On appeal, pursuant to R.I.G.L. § 42-35-15, the record established before the state agency is certified to the Superior Court, which conducts a review of the record established at the administrative agency. The

COUNTERSTATEMENT OF QUESTIONS PRESENTED AND OBJECTION TO THE JURISDICTION OF THE COURT TO GRANT A PETITION FOR A WRIT OF CERTIORARI – Continued

administrative agency certifies that record for Superior Court review which is government by R.I.G.L. § 42-35-15(g).

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MISSTATEMENTS IN PETITIONER'S BRIEF

The Petitioner in her brief has made numerous misstatements, many of them drafted in the posture of an assumption on Petitioner's part as to what took place or what happened. It is impossible because of the nature of the Petitioner's brief to enumerate all of them without extending unduly this recitation of misstatements. Accordingly, the Respondent, without admitting to any of the statements made in Petitioner's Brief, except those that are consistent with the record reflected by the decision of the Board and the Superior Court Justice who heard the case at the Superior Court level, is unable to accept the statement of facts and contentions set forth by the Petitioner and does not admit to same.

The following is a partial list of misstatements occurring in Petitioner's brief which are rejected by the Respondent:

1. The assertion that statements and expressions of prosecuting counsel, Bruce W. McIntyre, were taken as evidence and allowed as admissions of necessary supporting evidence, that the meaning of the testimony was taken out of context, and that parts of statements were deleted. Petitioner's Brief Page 3.

2. The assertion of "misrepresentations and violations of law." Petitioner's Brief Page 4.

3. Litany of events engaged in by Mr. McIntyre resulting in deprivation of sustentative and procedural due process of Mills from the inception of the case. Petitioner's Brief Page 4.

4. The assertion relating to motivations and the allegation of malice. Petitioner's Brief Page 4.

5. Personal derogatory assertions against Mr. McIntyre. Petitioner's Brief Page 4.

6. Assertions alleging threatening calls to her private office by Attorney McIntyre. Petitioner's Brief Page 6.

7. Assertions of harassments, slander and interference with her medical practice. Petitioner's Brief Page 6.

8. Assertions with respect to creating problems and removing Mills from practice and destroying her business. Petitioner's Brief Page 6.

9. Petitioner's assertions that McIntyre was involved in actions of misconduct. Petitioner's Brief Page 6.

10. Assertions relating to not being represented by conduct and matters connected therewith and the alleged quoted statement "I never lose in court." appearing on page 7 of Petitioner's brief.

11. Assertion that the Petitioner was the subject of myriads of violations by legal counsel of the medical board and assertions of him being a witness. Petitioner's Brief Page 8.

Mr. McIntyre never appeared as a witness in this case.

12. Assertions surrounding the summary suspension. Petitioner's Brief Page 9.

Petitioner had made in October 1999 anonymously a unfounded telephone complaint to the Department of Children, Youth, and Their Families against the parents of patients A, B, C and D, suggesting child abuse by the parents of patients of A, B, C and D.

13. Assertions on pages 9 and 10 concerning timeframes for hearing and timeframe on immediate suspension. Continuances were essentially at the request of Petitioner's counsel and due to the fact that Petitioner through counsel had requested discovery depositions and that Petitioner was represented by different lawyers at different times.

14. Assertion that at no time the administrative hearing was conducted in accordance with the administrative procedures act. Petitioner's Brief Page 10.

15. Suggestion that Mr. McIntyre was a member of the Board. Petitioner's Brief Page 10 and 11.

Mr. McIntyre was never a member of the Board, at no time participated in any adjudicative process. Mr. McIntyre's sole role was to act as prosecuting attorney on behalf of the investigating committee. At no time did Mr. McIntyre participate in any decision-making process.

16. During the hearings the Board was represented by a separate attorney as is clear from the record and is referred to in the record as the hearing officer who made the rulings during the trial concerning evidence and the introduction of evidence and other procedural matters.

17. Assertions that there were violations of the state's statute by reason of Mr. McIntyre's role, concerning the production of the complaint and the prosecution of the case before the Board. Petitioner's Brief Page 12.

18. Assertion that the sole basis for the Board's demand that Mills undergo an examination/evaluation was the one complaint of Deborah Cinquegrana. Petitioner's Brief Page 13.

19. Assertions that the certified lower record does not support the conclusions of the Superior Court Justice or the Board. Petitioner's Brief Page 14.

20. Assertions concerning the circumstances of the release of confidential health care information. Petitioner's Brief Page 14.

21. Assertions and suggestions concerning the background and basis relating to the request for a psychiatric evaluation. Petitioner's Brief Page 15.

22. Assertions concerning the background and circumstances having to do with the characterization of medical disorder and examination of information thereof and continuing circumstances surrounding same. Petitioner's Brief Page 15 and 16.

ARGUMENT

1. INTRODUCTORY STATEMENT

In the proceedings below, the Board of Medical Licensure and Discipline ("Board") issued an Order summarily suspending the license of Geraldine Mills, M.D. to practice medicine in the State of Rhode Island. Pursuant to R.I.G.L. § 5-37-8, a hearing date was scheduled within ten (10) days of the suspension. Petitioner's counsel requested a continuance and then a further continuance and then Amended Specification of Charges were served on the Petitioner setting forth seven counts of unprofessional conduct in violation of R.I.G.L. § 5-37-5.1. After several procedural motions were heard, and disposed of by the Board acting under Chapter 5-37 of the Rhode Island General Laws, hearings on the merits of the charges began

on August 23, 2000 and continued through December 7, 2000. Petitioner's counsel had earlier been granted a continuance to enable discovery which involved depositions. During the hearings the Board received 28 exhibits and heard testimony from six witnesses: the mother and father of female patients A, B, C and D; the mother and father of female patients E and F; a Board certified pediatric physician, who testified as an expert for the Board; and Dr. Mills. The Petitioner did not present any witnesses to testify on her behalf.

After the defense had rested its case and legal argument had been submitted, the attorney who had represented the Petitioner through the hearing process was discharged by the Petitioner. The Petitioner engaged new counsel who moved to reopen the record of the proceedings for the taking of additional evidence. The Board conducted a hearing on that motion on March 28, 2001, and filed a written Interim Order denying that motion. Thereafter, on May 24, 2001, Petitioner's counsel filed a second motion to reopen the proceedings to which Respondent objected. Thereafter, on June 11, 2001, the Petitioner, acting pro se, filed a third motion to reopen the proceedings. In its final administrative decision of July 10, 2001, the Board noted it had considered and denied the Petitioner's second and third motions to reopen them for the reasons which it had set forth in its Interim Order denying the Petitioner's original motion to reopen. The administrative decision of the Board is attached hereto as part of the appendix.

Following the Board's decision, and within the time permitted by law, the Petitioner filed a Complaint in the Rhode Island Superior Court pursuant to R.I.G.L. § 42-35-15 seeking judicial review of the Board's decision. Petitioner has failed to demonstrate that a federal question

was raised at this first level of judicial review in the Superior Court of the State of Rhode Island.

The entire record of all of the administrative proceedings was filed with the Superior Court as required by the Administrative Procedures Act, R.I.G.L. § 42-35-15.

The Petitioner, through counsel, while the matter was pending in the Superior Court, filed a petition to expand the Certified Record that had been made during hearings before the Board and to add additional evidence. The Board objected. The Superior Court after hearing and argument denied the Petition to Expand the Record and to add additional evidence. Superior Court Justice Procaccini denied the Petition to add additional evidence, and he proceeded to hear the case on the merits.

Justice Procaccini wrote an extensive decision that was filed in the Superior Court on November 13, 2003 affirming the decision and order of the Board. *Mills v. Nolan,* 2003 R.I. Super. LEXIS 146. A copy of the written decision is attached as part of the appendix in this matter. The Petitioner then appealed to the Rhode Island Supreme Court by Petition for Writ of Certiorari. On September 23, 2004, the Rhode Island Supreme Court denied the Petitioner's Petition for a Writ of Certiorari with a one sentence order which read "The petition for writ of certiorari is denied." (Supreme Court No. 03-626-M.P.)

2. FEDERAL JURISDICTION NOT SHOWN.

Rule 14(g)(i) of the Supreme Court Rules require that the federal questions be identified with a showing of the method or manner in which the federal question was raised and the way in which the federal question was

passed upon by the court. Further, the rule requires the quotations of specific portions of the record or a summary thereof with specific references to the place where the federal question appears. This is required in order to show that the federal question was raised timely and properly and that the Supreme Court of the United States has jurisdiction to review the judgment of the highest court of the state by Writ of Certiorari.

The Petitioner in this case has failed to demonstrate compliance with Rule 14(g)(i). The Rhode Island Supreme Court denied the Petitioner's Petition for a Writ of Certiorari with a one-sentence Order, that read: "The petition for writ of certiorari is denied." Rhode Island caselaw requires that constitutional claims be stated in clear and direct language with specific article, section, and clause in the federal or state constitution set forth. Federal law recognizes that state procedural law controls with respect to the raising of constitutional questions for the purpose of showing that a federal question was presented to the highest court of the state. General assertions have been made by the Petitioner, but the Petitioner has not demonstrated from the certified record the presentation of a federal question to the Rhode Island Supreme Court. Petitioner's request for Writ of Certiorari before this Court lacks a factual predicate to the certified record with respect to the raising of a federal question before the Rhode Island Supreme Court. Petitioner has failed to satisfy the requirements of U.S.C. § 1257(a) and has utterly failed to show that a federal claim under federal law was adjudicated by the Rhode Island Supreme Court adversely to the Petitioner.

3. FEDERAL QUESTIONS MUST BE RULED UPON BY STATE COURT.

This Court will not review matters alleged to be federal claims that were not passed upon or pressed at the state court level and it will not consider as an alleged federal claim, a claim that was neither addressed by or properly presented to the state court. *Campbell v. Louisiana,* 523 U.S. 392, 118 S. Ct. 1419, 140 L. Ed. 2d 551, 172 A.L.R. Fed. 597 (1998). Jurisdiction of the Supreme Court is dependent upon a showing from the record that a federal claim was adequately presented to the state court and that the alleged constitutional claim related to federal law rather than to state law. *Webb v. Webb,* 451 U.S. 493, 101 S. Ct. 1889, 68 L. Ed. 2d 392 (1981). The alleged federal claim must be sufficiently identified so as to fairly apprise the reviewing court of the substantial nature of the potential federal claim. *Anderson, Warden v. Harless,* 459 U.S. 4, 103 S. Ct. 276, 74 L. Ed. 2d 3 (1982).

Even if a federal question is shown to exist, the Petitioner must further show that the federal question is real and substantial. *Zucht v. King,* 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194 (1922); *Palmer Oil Corp. v. Amerada Petroleum Corp.,* 343 U.S. 390, 72 S. Ct. 842, 96 L. Ed. 1022 (1952); *Waters-Pierce Oil Company v. State of Texas,* 212 U.S. 86, 29 S. Ct. 220, 53 L. Ed. 417 (1909); *Arkansas Southern Railroad Company v. German National Bank,* 207 U.S. 270, 28 S. Ct. 78, 52 L. Ed. 201 (1907).

The record presented to this Court must affirmatively demonstrate that the state court had the relevant federal issues before it. *Bankers Life and Cas. Co. v. Crenshaw,* 486 U.S. 71, 108 S. Ct. 1645, 100 L. Ed. 2d 62 (1988). Indeed, the *Bankers Life* case held that at the *minimum*

there should be no doubt from the record that a claim under a federal statue or the U.S. Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law. Emphasis was put on the requirement that the record demonstrate the existence of the federal claim. If the record fails to indicate that a federal question was presented to the state court, then this Court will not take judicial notice or infer that a federal question had been involved in the case. *Yazoo & M.V.R. Co. v. Adams*, 180 U.S. 41, 21 S. Ct. 256, 45 L. Ed. 415 (1901); *Bakery & Pastry Drivers v. Wohl*, 313 U.S. 572, 61 S. Ct. 960, 85 L. Ed. 1530 (1941). This Supreme Court, when the highest state court has failed to pass upon a federal question, will assume that the omission was due to want of proper presentation in the state court unless the aggrieved party before this Court shall affirmatively demonstrate otherwise. *Board of Directors of Rotary Instructional et al. v. Rotary Club of Duarte et al.*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987).

Additionally, the United States Supreme Court will not decide federal constitutional issues raised for the first time on review of state court decisions. *Cardinale v. Louisiana*, 394 U.S. 437, 89 S. Ct. 1161, 22 L. Ed. 2d 398 (1969).

Rule 14.1(g)(i) requires particularization of when, where and how the federal questions were raised in the state court. A general citation of references in an appendix without the aforesaid specificity does not satisfy the responsibility to point out exactly when, where and how federal questions were passed upon or pressed before the state court. It has been held that when the highest state

court is silent on a federal question before an appellate court, then the Supreme Court of the United States assumes that the issue was not properly presented. The Petitioner has the burden of showing that the federal claim was properly presented to the state court. Additionally, the Petitioner must show that the alleged federal claim was raised at the time and in the manner required by state law. *Adams v. Robertson*, 520 U.S. 83, 117 S. Ct. 1028, 137 L. Ed. 2d 203 (1997). State procedural law controls with respect to the manner, method and time necessary to raise a federal question before the state's highest court. *Beck v. Washington*, 369 U.S. 541, 82 S. Ct. 955, 8 L. Ed. 2d 98 (1962).

General references to the Constitution of the United States are insufficient to meet the criteria required to identify a federal question. One is not permitted in the state court to invoke generally the Constitution of the United States. The record is required to show without doubt that a federal claim was presented to the state court and that the state court was apprised of the nature or substance of the federal claim at a time and in a manner required by state law. *Bankers Life and Cas. Co. v. Crenshaw, supra*. See also *Board of Directors of Rotary Instructional et al. v. Rotary Club of Duarte et al., supra.*

Merely to refer to a constitutional issue in a pleading is inadequate if the federal question is not adequately substantial or real or if the state court did not pass on the alleged federal question presented in the pleading. *Seaboard Air Line Ry. v. Padgett*, 236 U.S. 668, 35 S. Ct. 481, 59 L. Ed. 777 (1915). See also *Bowe v. Scott*, 233 U.S. 658, 34 S. Ct. 769, 58 L. Ed. 1141 (1914).

A mere reference to a constitutional issue without more does not raise a federal question since this Court may assume that the challenge was only based on a state Constitution and not a federal question. *Endowment & Benev. Ass'n of Kansas v. State of Kansas*, 120 U.S. 103, 7 S. Ct. 499, 30 L. Ed. 593 (1887).

In addition, one is not permitted to postulate that federal questions were raised in the state court by references to briefs and statements which are not part of the record transmitted to this Court. *Lynch v. People of New York ex rel. Pierson,* 293 U.S. 52, 55 S. Ct. 16, 79 L. Ed. 191 (1934).

4. REQUIREMENT THAT THE STATE COURT ACTUALLY DECIDE THE FEDERAL ISSUE.

For a state court decision to merit review before this Court, the record itself must show that the subject federal question was either decided by the state court or that the judgment rendered by the state court could not have been given without deciding the subject federal question. *Harding v. People of State of Illinois*, 196 U.S. 78, 25 S. Ct. 176, 49 L. Ed. 394 (1904). Further, the Petitioner on Certiorari must show more than a federal question being raised or one that might have been decided by a state court rather the record must demonstrate expressly or by necessary implication that the alleged federal question was actually decided by the state court. *Endowment & Benev. Ass'n of Kansas v. State of Kansas, supra.*

In a case where a state court has failed to expressly pass upon a federal question, the presumption is that the omission was due to a failure on the part of the parties to properly present the federal question to the state court

unless the petitioner before the United States Supreme Court can affirmatively show to the contrary. *Adams v. Robertson, supra*. See also *Exxon Corp. v. Eagerton,* 462 U.S. 176, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983).

5. ADEQUATE NONFEDERAL GROUND FOR STATE COURT DECISION.

If there is an adequate nonfederal ground for the state court decision which independently and adequately supports the state court judgment, then such adequate nonfederal ground will preclude United States Supreme Court review on Certiorari. *Radio Station WOW v. Johnson,* 326 U.S. 120, 65 S. Ct. 1475, 89 L. Ed. 569 (1945).

In a case where there is no opinion written by the highest court of the state, and it appears that the state court judgment might have rested upon a nonfederal ground, then the United States Supreme Court will decline jurisdiction. *Stembridge v. State of Ga.,* 343 U.S. 541, 72 S. Ct. 834, 96 L. Ed. 1130 (1952).

In the event that a state court judgment rests on one federal ground and another ground that is nonfederal, the United States Supreme Court has determined that it is without jurisdiction to review the case where the nonfederal ground is independent of the federal ground and the nonfederal ground is adequate to support the judgment. *Lee v. Kemna,* 534 U.S. 362, 122 S. Ct. 877, 151 L. Ed. 2d 820 (2002).

If a petitioner fails to comply with applicable state procedures concerning the making of a federal claim, then such failure will be held to be an adequate state ground for denial of certiorari. *In Re Lamkin,* No. 275, Misc. Supreme

Court of the United States, 355 U.S. 59, 78 S. Ct. 137, 2 L. Ed. 2d 107 (1957).

The rule precluding United States Supreme Court review of state court cases where an adequate and independent state ground exists is applicable with equal force whether the state-law ground is substantive or procedural. *Lee v. Kemna, supra.*

6. FEDERAL APPLICATION OF THE RAISE OR WAIVE RULE.

A party in the state court is obliged when raising a federal issue to raise it in a timely fashion and in accordance with state practice. A party failing to do so can be said to have waived the federal question and such a waiver will constitute an adequate independent ground of state court decision which then constitutes a bar to review by the United States Supreme Court. *Sochor v. Florida,* 504 U.S. 527, 112 S. Ct. 2114, 119 L. Ed. 2d 326 (1992). Constitutional issues must be raised at the trial level, and if not so raised, they will be deemed waived. This requirement is sometimes referred to as administrative issue-exhaustion. Appellate courts will not give consideration to issues not raised below. This principle is particularly applicable to matters involving adversarial administrative proceedings. *Sims v. Apfel,* 530 U.S. 103, 120 S. Ct. 2080, 147 L. Ed. 2d 80 (2000).

7. CONSTITUTION OF THE STATE OF RHODE ISLAND.

The Rhode Island Constitution has its own due process clause which says among other things:

> " . . . No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. . . . "Constitution of Rhode Island – Declaration of Rights – Article 1 § 2.

8. RHODE ISLAND LAW REQUIRES SPECIFICITY IN THE STATING OF CONSTITUTIONAL CHALLENGES.

Rhode Island Supreme Court decisions do not allow constitutional challenges to be alleged in general fashion. See *Bayview Towing, Inc. v. Stevenson,* 676 A.2d 325 (R.I. 1996). There a complaint alleged some fourteen violations of complainant's constitutional rights complaining that a state agency hearing officer violated complainant's "First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article 1, sections 5, 6, 10, 13, 14 and 24, and Article VI, section 1 of the Rhode Island Constitution." The Supreme Court of Rhode Island noted that this kind of "machine-gun assault" is improper and insufficient to warrant judicial consideration. The court noted that "[t]he complaint in this case falls victim to the deficiencies above noted and leaves barren the complaint except for its request for a stay of the nonexistent final agency decision." The court cited *Creditors' Service Corp. v. Cummings,* 57 R.I. 291, 304-05, 190 A. 2, 10 (1937); *Town of Foster v. Lamphere,* 117 R.I. 541, 545, 368 A.2d 1238, 1240 (1977); *Mesolella v. City of Providence,* 508 A.2d 661, 669 (R.I. 1986). The *Bayview* court stated at page 329:

> "He or she must state in clear and direct language which specific article, section and clause in the Federal or the State Constitution is alleged

to have been violated. To simply state that, for example, the fourteenth Amendment, as in this complaint, "without also specifying whether it is due process, privileges and immunities, or equal protection clause which is pertinent," is insufficient for certification."

9. RHODE ISLAND LAW RE: REOPENING FOR ADDITIONAL EVIDENCE.

The Rhode Island Supreme Court places serious restrictions on a party seeking to reopen after his or her case is closed. See *Roger Williams College v. Gallison,* 572 A.2d 61 (R.I. 1990). In Rhode Island the authority to remand back to a quasi-judicial body should not be exercised in such circumstances as to allow a person another opportunity to present a case when the evidence presented initially is inadequate. One cannot reopen on the grounds of new evidence when the evidence was available during the initial hearings. See *Corrente v. Town of Coventry,* 116 R.I. 145, 352 A.2d 654 (1976). See also *State v. Calenda,* 787 A.2d 1195 (R.I. 2002). The Rhode Island Superior Court has applied these rules to appeals from administrative agencies. See *Chattman v. City of Woonsocket,* 2003 R.I. Super. LEXIS 70 (April 15, 2003), applying *Roger Williams College v. Gallison, supra.* See also *Caito v. Juarez,* 795 A.2d 533 (R.I. 2002).

The Petitioner at no time sought a separate and independent review of the rulings of the Board or the Superior Court denying applications to reopen.

10. RHODE ISLAND APPLICATION OF RAISE OR WAIVE RULE.

Rhode Island follows a well settled "raise or waive" rule. This rule provides that issues which present themselves at trial and are not preserved by a specific objection at trial, sufficiently focused so as to call the trial justice's attention to the basis for said objection may not be considered on appeal. *In Re: Damien M.* 819 A.2d 213 (R.I. 2003), *Plourde et al. v. Myers,* 823 A.2d 1138 (R.I. 2003). The application of this Rule has been applied by the Superior Court of the State of Rhode Island with respect to administrative appeals from a state agency decision to the Rhode Island Superior Court. See the multiple-page comprehensive Superior Court rescript on this subject found in *Neuschatz v. Reitsma, as Director of RI Dept. of Environmental Management,* Superior Court of the State of Rhode Island, C.A. No. PC-02-1589, 2004 R.I. Super. LEXIS 96 (May 24, 2004).

11. RHODE ISLAND STANDARD FOR REVIEW OF ADMINISTRATIVE AGENCY DECISIONS.

In the State of Rhode Island, decisions of an administrative agency are first reviewable at the initial appellate level by the Superior Court pursuant to R.I.G.L. § 42-35-15. In the judicial review of the agency decision, the trial justice is not permitted to substitute his or her judgment for that of the state agency as to weight of the evidence on questions of fact. The decisions of the trial justice are subject to further review in the Rhode Island Supreme Court only by way of Certiorari. When the Supreme Court reviews the Superior Court justice's decision it applies the "some" or "any" test. The review is on the record and the

test is to determine if there is some or any legally competent evidence to support the Superior Court justice in his findings. See *Interstate Navigation Co. v. Div. of Public Utilities,* 824 A.2d 1282 (R.I. 2003).

When the Superior Court reviews a state agency decision pursuant to R.I.G.L. § 42-35-15, that review is limited to an examination of the certified record to determine if there is **any** legally competent evidence therein to support the agency's decision. In conducting that review, the Superior Court may not, on questions of fact, substitute its judgment for that of the agency whose action is under review. This is true even in a case in which the court might be inclined to view the evidence differently and draw inferences different from those of the agency. If there is sufficient competent evidence in the record, the court must uphold the agency's decision. See *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan,* 755 A.2d 799, 805 (R.I. 2000).

The Rhode Island Supreme Court has emphasized that the review in the Superior Court must confine itself to a review of the record to determine whether any legally competent evidence exists to support the agency decision. The Superior Court cannot go outside the certified record. *Baker v. Dept. of Employment & Training Board of Review,* 637 A.2d 360 (R.I. 1994). See also *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan, supra.*

12. *COX BROADCASTING CORP. ET AL. V. COHN* AS TO JURISDICTION

The Petitioner has stated in her brief at page 2:

"This Court has jurisdiction under "fourth Cox category" to review state court ruling if 1) "reversal

> of state court on Federal issue would be preclusive of any further litigation on relevant cause of action, 2) refusal immediately to review state court decision might seriously erode federal policy." Cox Broadcasting Corp Cohn 420US [sic] 469, 482-83 (1975), for application of this general jurisdiction rule."

Petitioner's argument is flawed in that the *Cox* case neither establishes criteria for determining whether or not a federal issue exists nor does it specify how it determines that a federal issue is present before a state court. The court in *Cox* essentially dealt with issues relating to finality of state court judgments.

CONCLUSION

Respondent requests that this Honorable Court deny Petitioner's request for a Writ of Certiorari. Petitioner has not met the long standing test established by this Court which would confer jurisdiction because Petitioner failed to raise the necessary federal questions to either the Rhode Island Superior Court or the Rhode Island Supreme Court. As stated above, these questions cannot be raised in the first instance at this level without demonstrating with specificity the place and manner in which it was raised by Petitioner at the state level or passed upon by the State Supreme Court in a manner that was critical to the case. In this matter, state law was sufficient to adjudicate the appellate issues presented to the Superior Court.

Petitioner has sought to introduce "evidence" and facts which would add to the certified record. This attempt was not permitted under Rhode Island law and was adjudicated appropriately at the state level where it was

entirely cognizable. This is an attempt to retry the factual predicates for the administrative decision. Petitioner, after the close of the case, sought to introduce evidence that was available to her during the administrative hearing. Moreover, Petitioner has made misstatements relating to facts, law and procedure.

For the foregoing reasons, Respondent respectfully requests that this Honorable United States Supreme Court enter an Order denying Petitioner's Petition for a Writ of Certiorari in the above-entitled cause of action.

Respectfully submitted,

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Counsel for the Respondent

Dated: December 30, 2004

APPENDIX

STATE OF RHODE ISLAND
PROVIDENCE, SC.

DEPARTMENT OF HEALTH BOARD OF MEDICAL LICENSURE AND DISCIPLINE	: : :	
IN THE MATTER OF GERALDINE MILLS, MD	: :	NO. 98187

ADMINISTRATIVE DECISION

This matter came on for hearing before the duly designated hearing committee of the Board of Medical Licensure and Discipline (hereinafter "Board") on diverse dates between December, 1999 and March, 2001.[1] The Respondent appeared at each of the hearings and was represented by legal counsel.

TRAVEL OF THE CASE

The Director of Health issued an Order summarily suspending the Respondent's license to practice medicine on October 19, 1999. A copy of the Summary Suspension is contained in State's Exhibit #1. The Board then set a hearing date for October 29, 1999. Respondent's then

[1] The Hearing Panel consisted of three members of the Board, including Stanley J. Stutz, M.D. During the pendency of the hearing, Dr. Stutz' term on the Board expired as a matter of law. Howard Hall, M.D. was designated to replace Dr. Stutz on his hearing panel. Dr. Hall has read all of the transcripts and reviewed all of the evidence. He participated in making the findings and conclusions stated herein.

counsel requested a continuance until November 5, 1999. Subsequent counsel requested a further continuance to December, 1999. At the original hearing conducted on December 8, 1999, Respondent's counsel argued several procedural motions before the Board, all of which were denied in a written Decision and Order dated December 21, 1999. Thereafter, the matter was further continued at the request of Respondent to enable her counsel to engage in discovery. The hearing reconvened in earnest on August 23, 2000 and continued through December 2000, after which time counsel for the Respondent and the State submitted lengthy memoranda.

After the closure of evidence and submission of legal argument, the attorney who had represented the Respondent through the hearing process was fired by Respondent. Replacement counsel moved to re-open the record of the proceedings for taking additional evidence. A hearing on that motion was conducted on March 28, 2001. The Board filed a written Interim Order denying the Motion on May 1, 2001. Subsequently, on May 24, 2001 Respondent's counsel filed a second Motion to Re-open the proceedings to which the State filed an Objection. Thereafter, in advance of any decision on the Second Motion to Re-Open, Respondent, acting pro se, on June 11, 2001 filed a third Motion to Re-Open.

RULINGS ON RESPONDENT'S SECOND AND THIRD MOTIONS TO RE-OPEN

The Board has considered Respondent's Second and Third Motions to Re-Open proceedings. For the reasons elucidated in the Board's Interim Order denying Respondent's original Motion to Re-Open Proceedings, the Board

hereby denies both motions without the necessity of further argument by the parties.

FINDINGS OF FACT

Via Count One of the Amended Specification of Charges, the Respondent is alleged to have been guilty of unprofessional conduct in the practice of medicine by virtue of having filed an application for staff privileges with Rhode Island Hospital, which application contained false, erroneous and misleading information concerning Respondent's credentials.

In support of this allegation, the State presented testimony from the Respondent as well as information obtained from the Rhode Island Hospital Staff Credentials Committee. The report of the RIH Credentials Committee noted several discrepancies in the information provided to it by Respondent (State's Exhibit 12). Among other things the report notes that the Respondent had indicated on her application for staff privileges (State's Exhibit 10) that she had been enrolled at Case Western University in a "Ph.D./MD" program. Under questioning by the Credentials Committee, Respondent admitted that she had only attended "medical school" classes as part of her graduate pathology program, but that at no time was she enrolled in Case Western's Medical School nor matriculating toward a medical degree. Next, the Credentials Committee took issue with Respondent's repetitious claims of having been "admitted" to both the Yale and Brown medical residency programs. As evidence of her acceptances at Yale and Brown, she provided the Committee with letters addressed to her from The Memorial Hospital in Pawtucket, RI and the Hospital of St. Raphael in New Haven, CT. Both of

these letters (State's 8 and 9) denote that the facilities had planned to rank her in their "matching" of residents with their residency programs. Upon further investigation by the Credentials Committee, it was learned that Respondent had never been "admitted" to either program and had not been at Brown or Yale at all. Respondent's application also referenced her internships at St. Thomas Hospital and Winthrop University Hospital. She advised the Credentials Committee that she had voluntarily left each of those hospitals after serving only one (1) year of a two (2) year internship. In fact, the Respondent was not offered a second year in either program. The record of Respondent's application proceedings (State's Exhibit #12) and her hearing before the Credentials Committee at Rhode Island Hospital (State's Exhibit #13) point out the inaccuracies contained in the materials Respondent forwarded and the statements she made to the Committee. Respondent's attempts to explain her misstatements before the Committee, and on the record of the within hearing, are at best convoluted and inconsistent. It is clear that Respondent provided false information to the Rhode Island Hospital Credentials Committee in an effort to gain staff privileges at the hospital. It is further clear that the Rhode Island Hospital Credentials Committee denied Respondent's application for staff privileges, whereas Respondent has steadfastly maintained on the record of this proceeding that she withdrew her application for staff privileges.

Count two of the amended specification of charges alleges that the Respondent was guilty of unprofessional conduct in that she was incompetent and negligent in the practice of medicine. Further, it is alleged that she was guilty of willful misconduct in the practice of medicine, all in connection with the treatment of four female patients.

In support of its charge, the State alleges that Respondent refused to conduct her clinical practice in an office setting and advised the patients and their parents that the offices were contaminated, as were their patient records. The Respondent delivered clinical care to the patients in the yard of her office building on Warwick Avenue in Warwick, RI and, alternatively, at the homes of the patients. The Respondent testified at great length about this charge. She related to the Board that pollutants and contaminants in the various buildings where she maintained her offices had caused her to move her office location four (4) times from 1994 to 1999. She testified that her first office was located at 65 Jefferson Boulevard. She had to move from that building because it had been contaminated by carpeting and glue used in it. She re-located to 770 Reservoir Avenue in 1996, taking all of her office/medical equipment with her. She advised the Board that all of her equipment and her patient records had been contaminated at the Jefferson Boulevard address, and that they in turn contaminated the Reservoir Avenue office. The Respondent next moved to 107 Warwick Avenue in 1998. She testified that premise was contaminated by an underground oil spill which had occurred prior to her purchase of the building. She could not stay there either, so she purchased a house which included her office at 1025 Warwick Avenue in 1998 or 1999. After a short time at that location, she determined that building was also contaminated as a result of its prior use as a hairdressing salon. She refused to enter the building after determining that it was toxic. It is from that location that the Respondent admits to having treated the children in her yard and in a vehicle parked outside the building.

The Respondent claims to have contacted the Department of Health (DOH), Poison Control, the Department of Environmental Management (DEM), and the Environmental Protection Agency (EPA) to investigate the various buildings. She told the Board that both DEM and the EPA had confirmed the existence of contaminants. In the case of one of the buildings, the Respondent testified that DEM advised her the dental office on the floor above her office was dripping radiological material through the ceiling onto her floor, and that she should not utilize the floor beneath the dentist's office. She also testified that she had all of her patient records tested by 3M Company for toxicity, and that all of the records were found to be contaminated.

The Board asked Respondent to produce copies of the DEM, DOH, Poison Control, EPA and 3M records. None were forth coming. Nor were any witnesses called to substantiate Respondent's statements. Respondent's testimony with respect to the alleged findings by the aforementioned agencies was not credible. Respondent admitted in her testimony that she began seeing patients outside the office. In one case, she had the patient meet her at the St. Joseph Hospital Emergency Room and examined her there. In another case, she directed the patient to meet her in the St. Joseph Hospital parking lot, and she examined and treated that child in the parent's vehicle while it was parked in the hospital parking lot. Respondent informed the Board that she no longer has staff privileges at St. Joseph Hospital.

Respondent admitted to the Board that on or about July 30, 1999, she saw two adolescent patients, Patient A and Patient B, and their mother at Respondent's office. Respondent advised them they could not go into the

building because it was contaminated. She advised them that she suspected pesticide poisoning or contamination from fire extinguishers. She stated that fire personnel had tested the extinguishers and had found nothing wrong with them. Respondent testified that she told the mother and her patients that it was necessary for her to treat the children in her yard, as she could not go in the building. She advised them that she had been hospitalized with blurred vision, nausea and an inability to swallow. In the record of this proceeding, the Respondent admitted she was never hospitalized, nor did she present any medical record or report to substantiate any treatment she may have received due to her "poisoning".

The Respondent advised the Board that she did not contact any regulatory agency with respect to conditions at the house/office at 1025 Warwick Avenue inasmuch as she had solicited the assistance of several agencies concerning the other buildings and none of them did anything. She testified that she told her patients that she had made complaints about the building to Blue Cross/Blue Shield, but that no one there cared that there were "deadly smells" in the office. On the occasion of the July 30th lawn visit, the Respondent refused to enter the building on Warwick Avenue. She sent patients A and B inside to see her assistant for vital signs, weight and, in the case of one, a urine sample. She then met the patients in the yard for examination in her assistant's van. The Respondent conducted blood tests in the yard. One of the patients was a teenager. While out in the yard, the Respondent, as part and parcel of her examination, within earshot of the mother and the other sibling, conducted an oral interview into the patient's use of cigarettes and alcohol, feelings of depression, sexual activity and suicide ideation. While she

was doing this, jets were flying overhead in and out of T.F. Green Airport. The Respondent commented to the parent and her patients that they were "dropping jet fuel" on her. The patient's mother testified in the hearing before the Board that this comment was made in all seriousness and that the Respondent seemed genuinely frightened of the jet fuel. Respondent advised the parent on that date that she was never going to enter the office building again, that she had made up her mind. She said she would begin making housecalls as a routine and she told them she was going to set up a tent in the yard to facilitate her treatment of patients. Following this incident, the parents of A and B, who had two other children under Respondent's care, sought medical assistance for their children elsewhere and made a complaint to the Department of Health concerning Respondent's activities. The mother of patients A and B explained that on July 30, 1999 the Respondent was acting and speaking to her and the children in a bizarre fashion. She did not want to escalate the problem, so she saw the visit through. On that date, Respondent told the parent that Blue Cross/Blue Shield and the Department of Health were involved in a conspiracy against her. The mother reported this strange behavior to the Department of Health.

The Respondent testified before the Board that in August of 1999 she administered +/-50 chicken pox vaccine shots to children in the back yard of 1025 Warwick Avenue. She stated that her assistant would hand the vaccine out the window to her, and that she vaccinated the children in the yard. She informed the Board that "It's very private back there."

Both of Patient A and B's parents testified as to harassment they endured following the making of their

complaint to the Board. The parents testified to receiving "hang-up calls", many of them, immediately after their contact with the Department. On one occasion, the Respondent called the parent husband in the middle of the night. She was angry at them for reporting her activities to the Department. She because [sic] hysterical in the conversation, screaming at the parent. He testified that he told the Respondent that it was opinion [sic] that she needed medical help and they (the parents) were trying to see that she got it.

The parent is a case worker at the Department of Children, Youth & Families (DCYF) where he investigates complaints of child abuse. He testified that his supervisor received an anonymous complaint regarding child abuse alleged to be existing in their home. The complainant alleged that child abuse had been going on over a period of many years from when the children were infants into their teens. The parent was thoroughly investigated as a result of the complaint, and all charges proved unfounded. However, the parent did suffer the indignity of being investigated for the very thing he seeks to prevent.

In her examination, the Respondent admitted that it was she who had anonymously reported the parents to DCYF. She did not seem to know that DCYF keeps recordings of anonymous calls. The tape of her call to DCYF was played at the hearing, from which the Respondent's voice was easily recognizable. The Respondent did not make the call to DCYF until after she was notified that the parents had filed a complaint with the Department of Health. She claimed in her testimony before the Board that she only began to suspect child abuse when she reviewed the children's medical records in conjunction with responding to the complaint leveled against her. In

describing her suspicions of abuse, she relied on the children's earlier medical records which she had obtained from former treating physicians. In coming to her conclusion that the children were victims of abuse, Respondent was particularly adamant about the fact that the parents had failed to inform her that one of the children had a "near SIDS" episode as an infant. That child, when Respondent began treating the children, was an adolescent, and at the time of the complaint, had reached her late teens.

The Respondent's inordinate attention to the child's experiences as an infant, given that the child had now become a young adult, are inexplicable. In her testimony before the Board, it is fair to say that the Respondent seemed obsessed with the "near SIDS" incident and the family's characterization of it as an "Acute Life Threatening Event" (ALTE) and/or "apnea". The Respondent disagreed vehemently with the expert presented by the State who indicated that the terms "near SIDS" and "ALTE" were synonymous. The expert also testified that nothing contained in the charts of these children would cause him to suspect child abuse.

The State's attorney then inquired of Respondent whether she was aware of the statutory reporting requirements for physicians suspecting child abuse. The Respondent knew that she was required to identify herself to authorities and file a written report. She testified that she made the anonymous call and did not follow-up with anything written because she was under the "Summary Suspension" order and was not acting as a doctor at the time.

It is clear that Respondent is guilty of Counts Two, Three and Four of the Amended Specification of Charges.

Count Six relates to yet another family with children who were treated by Respondent. In the case of one of the children, Respondent told the parents that she suspected the child to be suffering from "Williams Syndrome" which is characterized by dwarfish or elfin features and a "failure to thrive". Subsequent evaluation by another physician revealed nothing wrong with the child. The parents in this family determined to seek a relationship with another pediatrician for their children. Their testimony, supported by the Respondent's acknowledgement of same, was that Respondent advised the parents that their children's records could not be transferred until all fees were paid for services rendered. The family had not received any bills prior to their request for records, and they had health insurance coverage for the children. Copies of Respondent's billings to the family were introduced into evidence. The services rendered and amounts due as shown on the "bills" were incomprehensible to the Board. The physician member of the Board made extensive inquiry of Respondent on the record in an effort to obtain some understanding of Respondent's billing practices. The Board concluded that the so-called billings were unintelligible to practitioners, let alone patients and their families. Respondent did not turn over the patients' records to the family until the Department of Health intervened upon receipt of the parents' complaint in 1998.

Count Five alleges that Respondent has been guilty of unprofessional conduct and/or misconduct by reason of impairment which has adversely affected the ability of Respondent to conduct her practice in a professional manner.

Pursuant to Section 5-37-5.2(e)(2), the Investigating Committee of the Board may exercise the authority afforded by Section 5-37-1.3(10) to assist the Board if, in the opinion of the Investigating Committee, a licensee is suffering from an impairment.

Following the receipt of the aforementioned complaint in 1998, the Director of Health appointed an Investigating Committee of the Board to review Respondent's status. The Investigating Committee reviewed the pertinent materials and interviewed Respondent and potential witnesses. The Investigating Committee determined that there was reason to believe that the Respondent was suffering from an impairment, as a result of which she was unable to conduct her practice professionally. In accordance with Section 5-37-1.3(10), the Committee directed that Respondent submit to a psychiatric examination. Over the course of approximately one year between September 1998 and September 1999, the Respondent initially agreed with, then disputed, the necessity for an examination. In the meantime, the Board had received the second complaint. Following the Board's investigation of that complaint, the Board received the information relative to Respondent's filing of the false report with DCYF against the second complainants. As a result of Respondent's refusal to undergo an evaluation, and the Director's determination that her continuation in practice posed a substantial risk to patients, the Director issued the Summary Suspension on October 13, 1999. In her testimony on the record, the Respondent alternately stated that she did not care for the psychiatrist chosen for the evaluation by the State, that she had chosen her own psychiatrist who didn't complete the evaluation and with whom she could not get along and/or that she had been evaluated and was

presently treating with a psychiatrist. No medical records were furnished to support that Respondent had ever submitted to the evaluation as requested by the Investigating Committee. The Board must conclude that the Respondent has failed to comply with the directive of the Investigating Committee that she submit to a psychiatric evaluation in order to determine her competency to practice medicine.

CONCLUSION

Count Seven goes to the totality of the conduct and behavior alleged in prior counts. The cumulative weight afforded to all of the charges leads to the inescapable conclusion that Respondent is unfit to practice medicine in a professional manner at this time. The Board has the statutory authority to mandate that Respondent submit to physical and/or psychiatric examination as a condition to her continuation in the practice.

ORDER

1. That after hearing on the merits, Respondent's license to practice medicine is hereby suspended indefinitely.

2. That Respondent is ordered to submit to physical and psychiatric examinations to be conducted by medical professionals who are pre-approved by the Board.

3. That upon completion of the aforesaid examinations, the Respondent may apply for reinstatement other medical license provided the medical reports indicate that she is fit for practice and is in compliance with any treatment regimen proposed by her physicians. Whether Respondent's license is reinstated shall be left to the sound

discretion of the Board. Based upon the evidence presented, the Board may deny reinstatement or permit reinstatement upon such terms and conditions as are deemed necessary by the Board at that time.

Entered this 10th day of July, 2001.

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

SALLY JANE THIBODEAU, Ph.D. MEMBER
MEREDITH COSTA MEMBER
HOWARD HALL, M.D. PHYSICIAN MEMBER

/s/ Sally Jane Thibodeau, Ph.D.
For the Hearing Committee

Assented to as to content and form.

/s/ Patricia a. Nolan, MD, MPH
PATRICIA A.NOLAN, MD, MPH
DIRECTOR OF HEALTH

CERTIFICATION

I hereby certify that I have mailed a copy of the within ADMINISTRATIVE DECISION to Damon D'Ambrosio, Esquire, 663 Admiral Street, Providence, RI 02908 and a copy was also mailed to Geraldine Mills, M.D., 191 Squantum Drive, Warwick, RI 02888 on this 11th day of July, 2001.

/s/ Carole Allsworth

GERALDINE MILLS, M.D. VS.
PATRICIA A. NOLAN, M.D., M.P.H., DIRECTOR,
DEPARTMENT OF HEALTH

PC NO. 01-4153

SUPERIOR COURT OF
RHODE ISLAND, PROVIDENCE

2003 R.I. Super. LEXIS 146

November 13, 2003, Filed

JUDGES: PROCACCINI, J.

OPINION BY: PROCACCINI

OPINION: DECISION

PROCACCINI, J. Before this Court is an administrative appeal from a July 10, 2001, decision by the Rhode Island Department of Health, suspending Geraldine Mills's (referred to in this decision as "Appellant" or "Dr. Mills") license to practice medicine for an indefinite period of time. The Appellant seeks reversal of the Board of Medical Licensure and Discipline's decision suspending her license. Jurisdiction is pursuant to R.I. Gen. Laws 1956 § 42-35-15.

I. Case Travel and Facts

On October 19, 1999, the Director of Health issued an Order summarily suspending Dr. Mills's license to practice medicine in Rhode Island. The Board of Medical Licensure and Discipline set a hearing date for October 29, 1999, which, upon Dr. Mills's counsel's request, was continued until November 5, 1999. Subsequent counsel for Dr. Mills requested a further continuance until December of 1999. On December 1, 1999, Dr. Mills received the Board's

Amended Specification of Charges charging Dr. Mills with seven counts of unprofessional conduct, in violation of R.I. Gen. Laws § 5-37-5.1.

After receiving the Amended Specification of Charges, Dr. Mills's counsel proceeded to file several procedural motions, which were heard at the original hearing on December 8, 1999. On December 21, 1999, the Board issued a written Decision and Order denying all of Dr. Mills's motions. On this same date, the Board granted Dr. Mills's request for a continuance to enable her counsel to engage in discovery.

Hearings on this matter reconvened on August 23, 2000 and continued through December 7, 2000. The dates of the hearings were as follows: August 23, 2000; September 21, 2000; October 5, 2000; October 19, 2000; and December 7, 2000. During the hearings, the Board received 28 exhibits, and heard testimony from six witnesses: the mother and father of female Patients A, B, C, and D; the mother and father of female Patients E and F; Dr. Eden, an expert in the field of pediatrics; and Dr. Mills. Dr. Mills did not present any witnesses to testify on her behalf.

On July 10, 2001, the hearing panel rendered its decision to suspend Dr. Mills's license indefinitely. The Board's decision provided that Dr. Mills can apply for reinstatement after she has undergone a physical and psychiatric examination by medical professionals pre-approved by the Board, and the reports from this examination indicate that she is fit for practice. On July 11, 2001, the Director of Health approved the Board's decision. Dr. Mills filed an administrative appeal of that decision on August 9, 2001, pursuant to R.I. Gen. Laws § 5-37-7. The appeal of that decision is now before this Court.

The facts of this case are organized in terms of the counts Appellant was charged with during the proceedings. On August 23, 2000, the Board heard testimony from the Appellant. On September 21, 2000, the Board heard testimony from the parents of Patients A, B, C, and D, and the Appellant. On October 5, 2000, the Board heard testimony from the parents of Patients E and F. On October 19, 2000, the Board heard testimony from the Appellant and Dr. Eden. On December 7, 2000, the last day of the hearings, the Board heard extensive testimony from the Appellant on direct examination. The pertinent testimony of each of the aforementioned witnesses is recounted in relation to the respective counts contained in the Amended Specification of Charges.

Count One

Count One charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(8) and 5-37-5.1(19), for submitting an application to the Rhode Island Hospital Credentials Committee in 1993 that contained false, erroneous, and misleading information regarding her credentials. The Board reviewed five exhibits relating to this charge, including the following: the report of the Rhode Island Hospital Credentials Committee regarding information provided to it by Dr. Mills (State's Exhibit 12); Dr. Mills's application for staff privileges to said hospital (State's Exhibit 10); letters of admission to both the Yale University (Yale) and Brown University (Brown) residency programs, provided by Dr. Mills in support of her application (State's Exhibits 8 and 9); and the record of Dr. Mills's hearing before the Rhode Island Hospital Credentials Committee (Exhibit 13).

Additionally, the Board heard testimony from Dr. Mills relating to this charge.

Upon review of the aforementioned exhibits, the Board concluded that there were several discrepancies between the information Dr. Mills provided on her application for staff privileges to Rhode Island Hospital and her actual credentials. These inaccuracies were particularly apparent during Dr. Mills's hearing before the Credentials Committee. During the hearing, it was revealed that many of the credentials listed by Dr. Mills on her application were broad overstatements. Dr. Mills's application indicated that she was enrolled in a "Ph.D./MD" program at Case Western University, that she had been admitted to both the Yale and Brown medical residency programs, and that she voluntarily left her internships at St. Thomas Hospital and Winthrop University Hospital. Upon questioning by the Committee, Dr. Mills admitted that she had only attended medical school classes at Case Western University as part of her graduate pathology program and was never actually enrolled in their medical school. Upon further investigation by the Committee, it was also revealed that Dr. Mills was never actually admitted to the Yale and Brown residency programs, and that she was not offered a second year to continue her internships at St. Thomas Hospital and Winthrop University Hospital. The Board concluded that Dr. Mills's efforts during the hearings to clarify these discrepancies were "at best convoluted and inconsistent." (Administrative Board Decision at 4.) Furthermore, the Board found Dr. Mills's steadfast assertion of having voluntarily withdrawn her application from the Rhode Island Hospital Credentials Committee to be disturbing, when it was clear that the hospital denied her

application for staff privileges. (Administrative Board Decision at 4.)

Count Two

Count Two charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(18), and 5-37-5.1(19), for her incompetent and negligent treatment of female Patients A, B, C, and D, her inappropriate communications with the parents of said patients, and her willful misconduct in the practice of medicine relating to this family. In relation to this charge, the Board heard testimony from the parents of Patients A, B, C, and D, Dr. Eden, an expert in the field of pediatrics, retained by the Board, and the Appellant herself. At the time proceedings began Patient A was 19 years of age, Patient B was 17 years of age, Patient C was 15 years of age, and Patient D was 5 years of age.

The mother of Patients A, B, C, and D (herein referred to as Witness One) testified that she began taking her daughters to see Dr. Mills, when her youngest daughter was born. (Tr. of September 21, 2000 at 5.) Witness One testified that during the time she was using Dr. Mills as the family pediatrician, Dr. Mills moved her office to four different locations. (Tr. of September 21, 2000 at 5-7.) Witness One further testified that at the third office location on Warwick Avenue, Dr. Mills treated Patients B and D outdoors. When Witness One arrived with Patients B and D for their scheduled appointments to get physicals, Dr. Mills was standing in the driveway and informed them that the office was contaminated. Witness One testified that Dr. Mills conducted the initial examination of Patients B and D on the front lawn towards the street and

then requested that Witness One take Patient D inside for a urine sample. When Witness One returned with Patient D, the remainder of the physical was conducted on the front lawn. Witness One further stated that during this same visit, Dr. Mills asked Patient B whether she was sexually active, leaving Patient B mortified. According to Witness One, Dr. Mills proceeded to take blood samples from Patient B in her medical assistant's van, before deciding that it was too hot in the van, at which time Dr. Mills decided to take Patient D's blood outside on the grass. Witness One further testified that during this same visit, Dr. Mills pointed to an airplane flying over them and made a comment to the effect that the plane was dropping jet fuel.

Relating to this same charge, the father of Patients A, B, C and D, herein referred to as Witness Two, testified about his encounters with Dr. Mills. Witness Two stated that he personally brought his daughters to see Dr. Mills on approximately four occasions and was concerned by the frequency with which Dr. Mills was switching office locations. According to Witness Two, his concern regarding Dr. Mills's treatment of his daughters was heightened when he learned that Dr. Mills treated Patients B and D outdoors at the Warwick Office. (Tr. of September 21, 2000 at 61-63.)

Also providing testimony relating to this charge was Dr. Eden,[1] who stated that in the standard practice of

[1] Dr. Eden has been practicing pediatrics since 1988 and at the time of the proceedings had been licensed in Rhode Island for six years. He attended Boston University School of Medicine, and upon graduation came to Rhode Island as a pediatric resident and spent three years at the Rhode Island Hospital, Brown University Program. Upon

(Continued on following page)

medicine it would not be acceptable to practice medicine outdoors, noting that privacy and security are factors to be taken into consideration. (Tr. of October 19, 2000 at 35.) Dr. Eden explained that assuming there was a problem in a pediatrician's office building preventing its use, standard practice would require that the physician secure a private environment to protect the sanctity of the doctor/patient relationship. (Tr. of October 19, 2000 at 35.) According to Dr. Eden, barring a medical emergency, it would be more appropriate to cancel an examination than to conduct an examination outdoors. Dr. Eden clarified that in standard practice, a camp or school physical does not constitute a medical emergency. Additionally, Dr. Eden was firm in his testimony that conducting an examination in a car outside the physician's office stretched the bounds of propriety, barring an absolute medical emergency. Dr. Eden explained that such significant deviations from standard practice in the performance of medical examinations demonstrate inappropriate judgment, a sufficient reason for a pediatrician's disqualification. (Tr. of October 19, 2000 at 65.)

In response to these allegations, Dr. Mills testified about her treatment of Patients A, B, C, and D. Dr. Mills's testimony during the proceedings substantiates that she conducted an examination of Patients B and D outdoors because she believed her office to be contaminated. Dr. Mills did not dispute any of the facts relayed by Witness One regarding the outdoor examination of Patients B and

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completion of his pediatric residency training, Dr. Eden worked in Brockton Hospital for two years as a pediatrician. Since 1994, Dr. Eden has worked as the founding member of Children's Medical Group, a pediatric practice on the campus of Rhode Island Hospital.

D. Furthermore, Dr. Mills admitted that she sent Patient D inside the office for a urine sample when she herself would not enter the office because she believed the office contained deadly toxins. In totality, Dr. Mills's testimony relating to this charge revealed that all of the information relayed by the parents of Patients A, B, C, and D with respect to these patients' medical care were accurate.

Count Three

Count Three charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(18), and 5-37-5.1(19), for failing to maintain complete and accurate records for Patients A, B, C, and D, and for reporting false, misleading, and irrelevant information on said records. Witness One and Witness Two, as well as the Appellant, provided testimony in relation to this charge.

During the hearings, Witness One testified that all of her daughters' previous medical records from other doctors and hospitals were provided to Dr. Mills when they took her on as the family pediatrician. (Tr. of September 21, 2000 at 25.) She testified that the records were complete when they were provided to Dr. Mills and a yellow shot card was now missing from the records. (Tr. of September 21, 2000 at 26.) Witness One also explained that Patient A's apnea records, which were transported to Dr. Mills, were now missing. (Tr. of September 21, 2000 at 27.) Also testifying in relation to this charge, Witness Two stated that Patient A's chart includes an inaccurate notation that reads that he was too busy to take Patient A for an MRI after she was injured on a roller coaster. According to Witness Two, he never made any such comment to the Appellant. (Tr. of September 21, 2000 at 72.)

The Board also heard testimony from the Appellant in relation to this charge. During her testimony, Dr. Mills admitted to placing information in the aforementioned patients' records that did not directly concern their medical treatment. Dr. Mills testified that she included, in these patients' summary sheets, Witness One's statements that she did not smell toxins in the Appellant's office building. At the same time, the Appellant conceded that these summary sheets are intended to be devoted to the most important information regarding the patient's medical history.

Count Four

Count Four charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ §§ 5-37-5.1, 5-37-5.1(8), 5-37-5.1(18), and 5-37-5.1(19), for anonymously making an unfounded telephone complaint to the Department of Children, Youth and Their Families (DCYF) suggesting child abuse by the parents of Patients A, B, C, and D. The Board further maintained that this complaint was made as a retaliatory measure, because the parents had filed a complaint against Dr. Mills with the Department of Health. The Board heard testimony from the mother and father of Patients A, B, C, and D, Dr. Eden, and the Appellant, relating to this charge.

The mother of Patients A, B, C, and D testified that she contacted the Department of Health concerning the Appellant, after receiving a phone call in which the Appellant seemed suicidal. (Tr. of September 21, 2000 at 12.) During this conversation, the Appellant told Witness One that everyone, but namely the Department of Health and Blue Cross, were all out to get her. Witness One stated that after she sent a letter to the Department of Health regarding the Appellant's behavior, the Appellant began calling

her family at their home, demanding to speak with either her or her husband. On one occasion, the Appellant called back at midnight to speak with Witness One's husband and during that conversation asked why they were doing this to her. (Tr. of September 21, 2000 at 15.) According to Witness One, subsequent to this conversation, the family received repeated telephone calls and hang ups, one of which Patient B directly traced back to Appellant by dialing star 69. (Tr. of September 21, 2000 at 15-17.)

Witness Two's testimony outlined the full extent of retaliatory measures taken by Dr. Mills. Witness Two, who is employed as a case worker for DCYF, testified that Dr. Mills filed a complaint against him with DCYF claiming that she suspected abuse. According to Witness Two, he was called into his supervisor's office and was informed that an anonymous call had been made to the Child Abuse Hot Line in regard to suspicious injuries on Patients A and B. He further testified that the only person he could fathom making such a complaint was Dr. Mills. He explained to his supervisor that he had filed a complaint against Dr. Mills and suspected that it was she who made the call. On account of this information, Witness Two explained that DCYF conducted a non-investigation, downgraded to an early warning. (Tr. of September 21, 2000 at 64.) Witness Two testified, however, that though a non-investigation was considered more appropriate given the unusual circumstances, both the supervisor and the chief investigator were involved and asked Witness Two questions regarding potential abuse. (Tr. of September 21, 2000 at 66.)

In relation to this charge, Dr. Eden testified that there was nothing in the medical history of Patients A and B that would have led him to suspect child abuse. According to

Dr. Eden, a physician who is referred a medical chart from another physician has a duty to review that chart and consult the previous physician if he has any concerns about the care and treatment of that patient. (Tr. of October 19, 2000 at 29.) In cases where a pediatrician might suspect child abuse, Dr. Eden explained that the pediatrician would have a duty to consult the patient's record thoroughly and contact past treating physicians and past treating hospitals before contacting the appropriate agency. (Tr. of October 19, 2000 at 30-31.) Dr. Eden further clarified that the information provided in the records that Witness One brought to Dr. Mills regarding Patient A's past medical history would have given a pediatrician sufficient notice that the child had a near Sudden Infant Death Syndrome (SIDS) event in her life. (Tr. of October 19, 2000 at 34.) Furthermore, Dr. Eden explained that if a pediatrician does suspect child abuse, neglect or sexual abuse, the pediatrician is required to report that suspicion to DCYF or the appropriate agency and then follow that up with a written physician's record of examination. (Tr. of October 19, 2000 at 40.) Dr. Eden testified that it is not in accordance with the appropriate standard of care for a physician to call an anonymous hotline regarding suspicions of child abuse. (Tr. of October 19, 2000 at 41.)

During Dr. Mills's testimony on this issue, Dr. Mills conceded that she called the Child Abuse Hot Line regarding Witness Two, who she was aware worked for DCYF. (Tr. of August 23, 2000 at 74.) Dr. Mills stated that she made this phone call on October 5, 1999, only after she had learned that Witness One and Witness Two had filed a complaint against her with the Department of Health. (Tr. of August 23, 2000 at 75.) Dr. Mills further admitted that

the patient she was calling the Hot Line in regard to was 19 years of age at the time and had already started college. (Tr. of August 23, 2000 at 76.) Dr. Mills explained that the possibility of abuse came to her attention when she was carefully reviewing the records of Patients A, B, C, and D so she could respond to the claim that Witness One and Witness Two had filed against her. (Tr. of August 23, 2000 at 75.) According to Dr. Mills, she was particularly disturbed that Witness One had never mentioned that Patient A was a near SIDS baby; yet, had mentioned that Patient A had apnea. (Tr. of August 23, 2000 at 75.) Dr. Mills explained that this was worrisome because SIDS is more commonly known than apnea. (Tr. of August 23, 2000 at 75.) Furthermore, Dr. Mills claimed that when she thoroughly looked through the medical records of Patient A, provided by Witness One, she noticed numerous injuries from haphazard incidents which led her to believe that there was abuse occurring. (Tr. of October 19, 2000 at 20.) Dr. Mills later testified that she made the complaint to DCYF because she was concerned about Patients A, B, C, and D after seeing a Dateline show in which a girl was murdered by her father. (Tr. of December 7, 2000 at 57.) According to Dr. Mills, she feared that if she identified herself when making the report, she would be suspended. (Tr. of December 7, 2000 at 66.)

Count Five

Count Five charged Dr. Mills with unprofessional conduct in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(18), and 5-37-5.1(19), by reason of professional incompetency, in committing acts of misconduct due to an impairment that has directly affected her ability to practice professionally. As this charge is more general in nature, all of the

testimony throughout the proceedings is relevant. During the hearings, both Witness One and Witness Two expressed concern for the Appellant and explained to the Board that their reason for filing a complaint with the Department of Health was that they were worried that the Appellant might harm herself. Both sets of parents who testified during the proceedings, explained that they had filed complaints against the Appellant with the Department of Health after making the decision to switch to new pediatricians. Furthermore, during the proceedings, Dr. Eden testified that in his expert opinion, he did not believe that the Appellant was fit to practice medicine at the current time.

In addition to the testimony of the State's witnesses, a large basis for the Board's determination relating to this charge stems from the Appellant's own testimony during the proceedings. During her testimony, Dr. Mills admitted that she moved four times during her time in private practice, which lasted from 1994 until 1999. She explained that the reason for each of these moves was contamination in the buildings where her various offices were located. (Tr. of December 7, 2000 at 9-19.) According to Dr. Mills, her first office, located on Jefferson Boulevard, was contaminated by the carpeting and glue used in the office. Dr. Mills went on to explain that although her second office building, located at Reservoir Avenue, was not initially contaminated, it became contaminated after she moved her things over from the first building to the second building. Moreover, she testified that along with her furniture, medical equipment, papers and books, her patients' charts became contaminated. Though Dr. Mills claimed that such contamination could be verified through tests conducted by 3-M Corporation, Dr. Mills never

provided the results of such tests during the proceedings, even after being asked to do so. Dr. Mills further testified that she was never informed by DEM or the real estate agent that there had been a gasoline spill under the third office building. Finally, Dr. Mills attributed the contamination in the fourth building to toxic levels of formaldehyde. (Tr. of December 7, 2000 at 29-30.)

In explaining how she confronted these situations, Dr. Mills testified that she informed most of her patients about the contaminants in the various office buildings, and as soon as she became aware that there were toxins in a building, she would begin doing house calls. (Tr. of December 7, 2000 at 38.) Dr. Mills further explained that on one occasion, she examined a patient in the parking lot of St. Joseph's Hospital after St. Joseph's Hospital refused to allow her to examine the patient in the Emergency Room of the hospital. During the proceedings, Dr. Mills also felt it was important to clarify that this examination took place in the back of the patient's car. (Tr. of December 7, 2000 at 39-40.) Dr. Mills further admitted that due to the toxins in her offices, she began to conduct some of her examinations outdoors and confirmed that she gave her patients the chicken pox vaccine outdoors in the back of her office building, where according to Dr. Mills, it was private. (Tr. of December 7, 2000 at 54-55.) Dr. Mills did not dispute the fact that she allowed her medical assistant and young patients to go in and out of her office, when she herself would not enter the office building because she believed it contained deadly toxins. (Tr. of December 7, 2000 at 44-45.) Dr. Mills explained that she would wait outside while her patients went inside the office attended by Dr. Mills's medical assistant, so the patients could be

weighed, measured, and have their temperatures and vital signs taken. (Tr. of December 7, 2000 at 45-46.)

With respect to submitting to a psychiatric examination, as required by the Investigating Committee, the Appellant testified that she did not care for the psychiatrist chosen by the State and decided to choose her own psychiatrist to conduct an evaluation. The Appellant proceeded to explain that the psychiatrist she had chosen did not complete the evaluation because they could not get along.

Count Six

Count Six charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(19), 5-37-5.1(24), and 5-37-22 and the Rules and Regulations of the Board of Licensure and Discipline regarding medical records § 11.2, for her incompetent and negligent care of Patients E and F. In relation to this charge, the Board heard testimony from the parents of Patients E and F, Dr. Eden, and Dr. Mills.

The mother of Patients E and F (herein referred to as Witness Three) testified that she first became concerned about Dr. Mills's conduct when she noticed Dr. Mills's aggressive behavior toward Patient E. Witness Three explained that Dr. Mills became irritated when Patient E exhibited agitation about receiving injections and that Dr. Mills would request that Witness Three hold her daughter down. Additionally, Witness Three testified that Dr. Mills used an aggressive tone with Patient E. Witness Three also testified as to how uncomfortable it was for her to bring Patient E for shots due to the tense environment it created and explained that she has not incurred similar

problems since she switched pediatricians. (Tr. of October 5, 2000 at 6-7.)

Regarding the care of Patient F, Witness Three testified that Dr. Mills informed her that Patient F was not growing at the standard rate and made statements to the effect that Patient F could potentially turn out to be a dwarf. Witness Three testified that Dr. Mills showed her pictures of dwarfs and commented that dwarfs have a life span of approximately 20 years. According to Witness Three, Dr. Mills went through a thorough explanation of dwarfism, showed Witness Three a medical book stating the symptoms and signs of the disease, and went on to tell Witness Three that Patient F exhibited dwarf like features, and may be suffering from a condition known as Williams Syndrome. Dr. Mills also used the descriptive terms, "elf" and "midget," in referring to this patient. Although there was some confusion during the proceedings as to which of these words was used at which time, the record reveals that Dr. Mills used these terms in reference to Patient F. Based on Dr. Mills's findings, Witness Three testified that Dr. Mills ordered related tests, consisting of a heart exam and x-rays. Witness Three further testified that when she brought Patient F for the heart exam, that doctor told Witness Three that there was no need for such extensive tests. Witness Three further explained that despite these findings, Dr. Mills wanted to conduct additional tests because of Patient F's small size. The results of all tests done on Patient F proved negative. (Tr. of October 5, 2000 at 30.)

In addition to finding the above stated treatment of Patients E and F to be inferior, Witness Three's testimony also revealed that she was taken aback by Dr. Mills's lack of attentiveness in ensuring that she was able to care for

Patients E and F on a regular basis. According to Witness Three, between 50 to 60 percent of the time Patients E and F needed to see Dr. Mills on an emergency basis, they were transferred to another doctor. (Tr. of October 5, 2000 at 14.) Witness Three further stated that she was given a beeper number to use for emergencies which she was afraid to use because Dr. Mills appeared very irritated when she was called on her beeper. (Tr. of October 5, 2000 at 27.)

As a result of the difficulties which they were experiencing in using Dr. Mills as the family pediatrician, Witness Three testified that she and her husband decided that it would be best if they chose a new pediatrician. Upon making this decision, Witness Three stated that they informed Dr. Mills that they would need her to transfer the medical records of Patients E and F. Witness Three testified that Dr. Mills refused to send said records to the new pediatrician until Witness Three and her husband paid certain co-pays she claimed were outstanding. (Tr. of October 5, 2000 at 12.) Witness Three further explained that neither she nor her husband understood how Dr. Mills arrived at the total amount allegedly owed, and there was no clarification on this issue.

The father of Patients E and F (herein referred to as Witness Four) corroborated his wife's testimony, explaining that after he and his wife decided to switch to a new pediatrician, he went to the Appellant's office to sign a release for the transfer of medical records. (Tr. of October 5, 2000 at 44.) Witness Four testified that Dr. Mills informed him that she would like Witness Four and his wife to pay her bill before she transferred the medical records of Patients E and F. Moreover, Witness Four stated that Dr. Mills informed him that in addition to the copays, he

and his wife would have to pay for the transfer of medical records. (Tr. of October 5, 2000 at 52). Witness Four responded that they would not pay the bill until Dr. Mills accounted for the amounts listed, at which time, Dr. Mills agreed to transfer the records and give an accounting of the amounts allegedly owed. Witness Four explained, however, that the records promised were not transferred until after he contacted the Department of Health a couple of weeks later. (Tr. of October 5, 2000 at 46.)

In addition to the testimony of Witnesses Three and Four regarding Dr. Mills's care of Patients E and F, the Board heard extensive testimony from Dr. Eden on this subject. In regards to Dr. Mills's treatment of Patient E, Dr. Eden testified that it is not customary practice for a pediatrician to act aggressively when pediatric patients express agitation about receiving injections. With respect to Dr. Mills's care for Patient F, Dr. Eden testified that there was nothing in Patient F's chart that would lead him to conclude that Patient F would be a midget, an elf, or a dwarf. Dr. Eden further explained that though Patient F was short, she was proportional for her weight and he would characterize her growth as normal. (Tr. of October 19, 2000 at 36.) Though Dr. Eden conceded that Patient F was only in the fifth percentile in terms of weight and that a doctor would want to monitor the child's growth given such facts, he stated that it would not be cause for alarm. (Tr. of October 19, 2000 at 67.) Furthermore, Dr. Eden explained that although the cardiologist did find a slight heart murmur in Patient F, absent a failure to thrive, Dr. Mills had no basis for her suspicions that Patient F suffered from a disease known as William's Syndrome. (Tr. of October 19, 2000 at 74.) In regard to the transferring of

medical records, Dr. Eden testified that in his opinion it would violate the standard of care for a doctor to withhold a medical record for an unpaid balance. (Tr. of October 19, 2000 at 28).

Count Seven

Count Seven charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws § 5-37-5.1, for the acts referred to in the Summary Suspension of October 19, 1999, and for the collective and cumulative impact of the aforementioned acts of misconduct. This charge relates to all of the testimony throughout these proceedings, paraphrased in the discussion of the preceding counts. Based on the cumulative weight of the evidence presented throughout the proceedings, the Board concluded that the Appellant is presently unfit to practice medicine.

II. Standard of Review

The Court's review of a decision by the Department of Health is controlled by R.I. Gen. Laws 1956 § 42-35-15(g), which provides for review of a contested agency decision:

> (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1 In violation of constitutional or statutory provisions;

(2 In excess of the statutory authority of the agency;

(3 Made upon unlawful procedure;

(4 Affected by other error or law;

(5 Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6 Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

This section precludes a reviewing court from substituting its judgment for that of the agency in regard to the credibility of the witnesses or the weight of the evidence concerning questions of fact. *Costa v. Registry of Motor Vehicles*, 543 A.2d 1307, 1309 (R.I. 1988); *Carmody v. R.I. Conflict of Interest Commission*, 509 A.2d 453 (R.I. 1986). This is true even in cases where the court, after reviewing the certified record and evidence, might be inclined to view the evidence differently from that of the agency. *Berberian v. Dept. of Employment Security*, 414 A.2d 480 (R.I. 1980). This Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." *Milardo v. Coastal Resources Management Council*, 434 A.2d 266, 272 (R.I. 1981). Questions of law, however, are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. *Carmody v. R.I. Conflicts of Interests Commission*, 509 A.2d at 458. The Superior Court's role is to examine whether any competent evidence exists in the record to support the agency's findings. *Rocha v. Public Util. Comm'n*, 694 A.2d 722, 727 (R.I. 1997). The Superior Court is required to

uphold the agency's findings and conclusions if they are supported by competent evidence.

Rhode Island Public Telecommunications Authority, et al. v. Rhode Island Labor Relations Board, et al., 650 A.2d 479, 485 (R.I. 1994).

Substantial Evidence

Appellant argues that this Court should reverse the Board's decision because the Board's findings are not supported by the substantial weight of the evidence. Specifically, the Appellant contends that the evidence presented during the hearings do not support the Board's conclusions regarding (1) the anonymous complaint Appellant made to DCYF; (2) Appellant's concerns regarding Witness One's failure to mention that Patient A suffered from a near SIDS episode; (3) Appellant's treatment of patients outdoors; (4) Appellant's differential diagnosis that Patient F might suffer from William's Syndrome; (5) Appellant's willingness to transfer the medical records of Patients E and F; (6) Appellant's willingness to undergo an evaluation; (7) Appellant's Rhode Island Hospital Application; and (8) the issue of whether Appellant suffered from a mental impairment. The Board argues that under the fair preponderance standard, the Board had substantial evidence to find unprofessional conduct on the part of the Appellant for each of the seven counts. This Court addresses each of the Appellant's arguments below.

DCYF COMPLAINT

Appellant argues that the testimony presented during the hearings demonstrates that the Appellant had legitimate

concerns in filing a complaint with DCYF, against the parents of Patients A, B, C, and D. Moreover, Appellant contends that the Board's findings are inconsistent with the applicable child abuse reporting statutes, which specifically provide for hot line reports. In reviewing the Board's decision, this Court finds that substantial evidence of record existed in the form of witness testimony for the Board to conclude that the Appellant's complaint to DCYF constituted unprofessional conduct.

Though the Appellant contests the Board's determinations with regard to the credibility of the State's witnesses, it is not for this Court to substitute its judgment for that of the agency regarding the credibility of witnesses or the weight of the evidence with respect to questions of fact. *Tierney et al. v. The Department of Human Services*, 793 A.2d 210 (R.I. 2002). As with other witnesses, where evaluation of an expert's testimony implicates determinations of credibility, the Court should defer to the agency's determinations. See *Environmental Scientific Corp. v. Durfee*, 621 A.2d 200, 206-07 (R.I. 1993). The Board heard testimony from Witness One and Witness Two, both of whom the Board found to be credible, that the Appellant began calling their home and harassing them after they filed a complaint against the Appellant with the Department of Health. Each of these witnesses testified that Appellant had never expressed any concern that abuse might be occurring in their home and that there was no foundation for such concerns. The Appellant herself admitted that she placed an anonymous call with the Child Abuse Hot Line regarding Witness Two. The Board also found convincing the testimony of Dr. Eden, an expert in the field of pediatrics, who stated that based on the records of Patients A, B, C, and D, there was no reason for the Appellant to suspect

that abuse was occurring. Furthermore, Dr. Eden testified that if a pediatrician did suspect child abuse, it would not be in accordance with the standard practice to place an anonymous call. He explained that standard practice requires a physician to state their name and follow the phone call up with a written report.

Moreover, the Appellant's handling of the complaint was in direct contravention of the law. The statute that governs reports by physicians who suspect abuse or neglect is R.I. Gen. Laws § 40-11-6. The statute reads:

> "(a) When any physician or duly certified registered nurse practitioner has cause to suspect that a child brought to him or her for examination, care, or treatment, is an abused or neglected child as defined in this chapter, or when he or she determines that a child under the age of twelve (12) years is suffering from any sexually transmitted disease, he or she shall report the incident or cause a report thereof to be made to the department as provided in subsection (b).
>
> (b) An immediate oral report shall be made by telephone or otherwise, to both the department and law enforcement agency and shall be followed by a report in writing to the department and law enforcement agency explaining the extent and nature of the abuse or neglect the child is alleged to have suffered.
>
> (c) The department, upon receipt of such a report by a person other than physician or duly certified registered nurse practitioner alleging that a child has been physically abuse [sic], shall investigate the report, and if the investigation reveals evidence of physical or sexual abuse, the

> department shall have the child examined by a licensed physician or duly certified registered nurse practitioner. Any child protective investigator shall, with or without the consent of the parent or other person responsible for the child's welfare, have the right to remove the child from the place where the child may be to secure the examination required by this subsection. Upon completion of the examination, it shall be mandatory for the physician or duly certified registered nurse practitioner to make a written report of his or her findings to the department."

In addressing questions of statutory interpretation, the Supreme Court of Rhode Island had held that the Court "must literally interpret a clear and unambiguous statute and attribute the plain and ordinary meaning to its words."

Arnold v. R.I. DOL & Training Bd. of Review, 822 A.2d 164, 168 (R.I. 2003) (citing *Solas v. Emergency Hiring Council of Rhode Island,* 774 A.2d 820, 824 (R.I. 2001)). The above statute unambiguously distinguishes between the duty of physicians, as compared to the duty of ordinary citizens in filing complaints regarding abuse. It is clear that a physician has a higher duty when reporting a case of suspected child abuse. Thus, this Court finds that there was substantial evidence in the record to support the Board's finding that the complaint made by Appellant constituted unprofessional conduct.

Treatment Outdoors

Appellant argues that the Board erred in finding that Appellant's decision to treat her patients outdoors constituted unprofessional conduct. Appellant maintains that

such outdoor treatments were necessary because of problems in the various office buildings where she decided to locate her offices. Furthermore, Appellant asserts that based on Dr. Eden's testimony during the hearings, outdoor examinations may not be a reason to disqualify someone from practicing medicine and outdoor exams are permissible in cases of emergency. In view of all the testimony presented during the hearings, this Court finds substantial evidence in support of the Board's finding that Appellant's outdoor treatment of patients constituted unprofessional conduct.

"Judicial scrutiny on appeal 'is limited to a search of the record to determine if there is any competent evidence upon which the agency decision rests. If there is any such evidence, the decision will stand.'" *Restivo v. Lynch*, 707 A.2d 663, 665 (R.I. 1998) (quoting *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285-86, 373 A.2d 496, 501 (R.I. 1977)). This Court finds substantial evidence on the record to support the Board's finding that Appellant's treatment of patients outdoors constituted unprofessional conduct, including the testimony of an expert witness who explicitly stated that the Appellant's use of outdoor treatment was not within the parameters of professional conduct. Under § 5-37-5.1(19) unprofessional conduct includes:

> "Incompetent, negligent, or willful misconduct in the practice of medicine which includes the rendering of medically unnecessary services, and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice in his or her area of expertise as is determined by the board. The board need not establish actual injury to the patient in order to adjudge a physician or limited registrant guilty

> of the unacceptable medical practice in this subdivision."

It is well established that this Court effectuates the Legislature's intent "by examining a statute in its entirety and giving the words their plain and ordinary meaning." *Parkway Towers Assocs. v. Godfrey*, 688 A.2d 1289, 1294 (R.I. 1997) (quoting *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994)). This Court's primary objective in applying a statute is to ensure that its enforcement is consistent with the statute's underlying purpose.

Kirby v. Planning Board of Review of the Town of Middletown, 634 A.2d 285, 290 (R.I. 1993) (citing *Zannelli v. Di Sandro*, 84 R.I. 76, 121 A.2d 652, 655 (R.I. 1956)).

While the Rhode Island Supreme Court has not specifically addressed the extent of the Board's authority in determining what constitutes inappropriate conduct, other jurisdictions have found that a Board of Medicine and licensees possess sufficient understanding in the field of medicine to make such determinations. The Court of Appeals of Michigan has held that a statutory provision, which prohibits departure from minimal standards of practice is "sufficiently certain and definite" based on "well recognized meanings" to afford a licensee fair notice as to what type of conduct is unacceptable in the field of medicine. See *Joseph W. Rucker, M.D. v. Michigan Board of Medicine*, 138 Mich. App. 209, 360 N.W.2d 154 (Mich. App. 1984). "It is therefore, proper for the Board of Medicine, having education and experience, to determine whether petitioner's actions constituted a violation of minimal standards." Id. (citing *Sanchick v. State Board of Optometry*, 342 Mich. 555, 70 N.W.2d 757 (1955); *Warchuis v. State Bd. of Registration in Medicine*, 285 Mich. 699, 281

NW 410 (1938)). Adopting this same reasoning, the Supreme Court of Arkansas has held that certain behavior is so obviously unprofessional that it not needs to be explicitly spelled out in a statute in order for a Board of Medicine to deem that it warrants a severe sanction. Thus, in *Arkansas State Medical Board v. John Q. Elliott, M.D.*, 263 Ark. 86, 563 S.W.2d 427 (Ark. 1978), the Supreme Court of Arkansas held that suspension of the appellant's license was appropriate where the appellant gave two prescriptions to the same man under two different names who admittedly had nothing wrong with him. That there was no law expressly proscribing such conduct could not excuse such sub par behavior on the part of a practicing physician. See id.

In the present case, there was substantial evidence in the record to confirm the Board's finding that Appellant's outdoor treatment of her patients was not in accordance with the minimal standards of acceptable and prevailing medical practice. Appellant herself admitted that on one occasion, she treated a child in a parking lot inside the patient's car, and other times, she would treat the children outside in the backyard. She also conceded that she administered the chicken pox vaccine in the yard and that she drew blood from patients B and D outdoors. According to Dr. Eden, the outdoor treatment Appellant engaged in was not justified, regardless of the alleged contamination in the Appellant's office buildings. He explained that while contamination in the offices would have necessitated alternative venues for the examinations, such outdoor examinations were inconsistent with the appropriate standard of care. Furthermore, the Board did not believe that every building owned by Appellant was contaminated as suggested in her testimony. Appellant failed to present

any evidence during the hearings to substantiate her claims that each of her office buildings that she inhabited was contaminated. Additionally, Appellant made admissions to the effect that she permitted her medical assistant to go in and out of the allegedly contaminated buildings while she waited outside. Appellant also testified that everything, including patients' medical records, had become contaminated. Yet at the same time, admitted that she placed these same records in her parents' home and would have her medical assistant retrieve them when they were needed. Based on the aforementioned evidence, this Court concludes that there was substantial evidence in support of the Board's determination that Appellant's outdoor treatment constituted unprofessional conduct.

Williams Syndrome

Appellant next argues that the evidence presented during the proceedings demonstrates that Appellant's differential diagnosis that Patient F might suffer from "Williams Syndrome" was not unfounded. Appellant asserts that the Board's conclusion that later examination revealed nothing wrong with Patient F is contrary to the evidence that the Board heard. In light of the cumulative testimony presented during the hearings, this Court finds that there was substantial evidence supporting the Board's finding that the Appellant's medical treatment of Patient F constituted unprofessional conduct.

Under § 5-37-5.1(19), discussed in the preceding section, the incompetent or negligent practice of medicine is sufficient for the Board to find that a physician has committed unprofessional conduct. During the proceedings,

the Board heard Dr. Eden testify that a competent physician would not have suspected that Patient F had Williams Syndrome. Furthermore, according to Witness Three, whom the Board found to be credible, when Witness Three took Patient F for a heart exam, the doctor said that there was no reason for additional tests to be conducted. Though Appellant claims her medical diagnosis was appropriate, Appellant failed to present any experts to confirm her assertions that her medical treatment of Patient F was reasonable. While our Supreme Court has not directly addressed the degree of discretion a medical board ought to be afforded when making a decision regarding the adequacy of a physician's care, this issue has been addressed by other courts. Other jurisdictions have concluded that a board, which has the benefit of expert testimony in reaching its decision, should be afforded a great deal of deference in its determinations as to what constitutes an extreme departure from the ordinary standard of care. See *Livingston, M.D. v. Arkansas State Medical Board*, 288 Ark. 1, 701 S.W.2d 361 (Ark. 1986). Thus, in *Livingston M.D. v. Arkansas State Medical Board*, the Supreme Court of Arkansas affirmed suspension of the appellant's license, where the appellant negligently led a patient to believe that she was pregnant for a period of four months. Though the appellant in that case offered expert testimony to the effect that the appellant's records demonstrated an adequate standard of care, the Court concluded that a physician's conduct does not have to rise to the level of malpractice for it to constitute unprofessional conduct warranting suspension of a license. See id. Similarly, in the present case, this Court finds that there was substantial evidence in the record to support the Board's conclusion that Appellant's treatment of Patient F

did not conform to the ordinary standard of care and warranted a sanction that the Board deemed appropriate.

Record Transfer Issue

Next, Appellant argues that the Board's finding that Appellant refused to transfer records "until all fees were paid for services rendered" is clearly erroneous in light of the substantial weight of the evidence. The Appellant fervently denies wrongfully withholding Patients E's and F's records despite the testimony of Patients E's and F's parents that the Appellant made the payment of a disputed bill a condition precedent to sending said records. Upon review of the Board's decision, this Court finds that there was substantial evidence on the record to support the Board's finding that the Appellant acted unprofessionally in failing to transfer patients' records to a new pediatrician in a timely manner.

As stated above, this Court will not substitute its judgment for that of the Board with respect to the credibility of witnesses. See *Tierney, et al.*, 793 A.2d 210, 213 (R.I. 2002). Thus, no new determinations will be made here as to the credibility of the parents of Patients E and F, where the Board has already found these witnesses to be credible. See id. As such, this Court is confined to making a determination solely on the basis of whether there was competent evidence on the record to support the Board's finding that the Appellant acted unprofessionally in her transferring of patients' records. See id. at 212.

With respect to this issue, the parents of Patients E and F, both of whom the Board found to be credible, each testified that the Appellant refused to transfer their daughters' medical records until they paid the bill Appellant claimed

they owed. In reviewing copies of the Appellant's billings to the family, the record reveals that the services rendered and amounts shown as due on the bills were incomprehensible to the Board. Appellant's refusal to transfer records until the parents of Patients E and F paid the amount shown on bill was substantiated by the fact that Appellant did not turn over the patients' records until the Department of Health intervened. Thus, this Court finds substantial evidence in the record for the Board's finding that Appellant acted unprofessionally in the transferring of patients' records.

Evaluation Issue

Appellant argues that she is willing to be examined by a psychiatrist, but not one who is subject to the Board's control. Appellant asserts that she has been examined by another psychiatrist and it has been determined that she suffers from no mental impairment. Therefore, there is no reason why she should not be permitted to practice medicine. This Court finds substantial evidence on the record to support the Board's finding that the Appellant had not cooperated with the Board's order that Appellant submit to a psychiatric examination in accordance with the conditions provided by the Board.

Pursuant to § 5-37-5.2(e)(2), the Investigating Committee of the Board may exercise the authority afforded by § 5-37-1.3(10) to assist the Board, if the Investigating Committee determines that the licensee is suffering from an impairment. The Investigating Committee was enlisted by the Director of Health to investigate the Appellant's behavior after a complaint was filed against the Appellant in 1998. After conducting a review of the Appellant, which included

interviewing the Appellant and potential witnesses, the Committee felt it appropriate for Appellant to submit to a psychiatric examination. Based on the evidence presented, the Board concluded that the Appellant had not as of yet submitted to an evaluation. During Court hearings, the Appellant expressed reluctance to submit to an examination by a psychiatrist preapproved by the Board as opposed to one of her own choosing.

Thus, this Court finds that there is substantial evidence in support of the Board's finding that the Appellant did not comply with its order.

Rhode Island Hospital Application

Appellant argues that her Rhode Island Hospital application did not contain false information and asserts that her usage of the word "acceptance" in relation to Yale and Brown was in relation to her acceptance as a match candidate for those programs. Appellant further contends that her reference to her two years of medical school at Case Western University was not a misrepresentation because she accurately stated her role as a Ph. D candidate (registered but not matriculated in the medical school), accurately identified the school where she earned her medical degree, and identified all her residencies and internships. This Court finds that substantial evidence existed in the form of testimony and exhibits to conclude that the Appellant committed unprofessional conduct in the submission of her Rhode Island Hospital application.

As the Board reviewed Appellant's application for staff privileges and the information obtained from the Rhode Island Hospital Staff Credentials Committee, this Court must give deference to the Board, as the trier of fact, in

finding that the Appellant made several misrepresentations in her efforts to obtain staff privileges. See *Rhode Island Public Telecommunications Authority, et al. v. Rhode Island Labor Relations Board, et al.*, 650 A.2d 479, 485 (R.I. 1994). Based on the Board's thorough evaluation of the exhibits regarding this matter, this Court finds that there was substantial evidence to support the Board's finding that Appellant "provided false information to the Rhode Island Hospital Credentials Committee in an effort to gain staff privileges at the hospital." (Administrative Board Decision at 4.) The Board found that the Appellant made several misrepresentations on her application, including her affiliation with Case Western University Medical School, her admission to the Yale and Brown residency programs, and her alleged voluntary departure from two different internships. This Court finds that there was competent evidence to justify the Board's findings on this charge.

III. Adequacy of Evidence

Next, Appellant asserts that certain testimony permitted in the hearings constituted hearsay that unfairly biased the proceedings. One particular example that Appellant focuses on is Witness One's testimony that when Patient B dialed star 69 after a hang-up, Appellant answered. Based on the rules governing administrative hearings and the nature of the hearsay evidence, this Court finds that the Board's admittance of hearsay evidence during the hearings did not unfairly bias the proceedings.

This Court has consistently acknowledged that the parameters for admitting relevant evidence in administrative proceedings are broad in scope. "Administrative hearings

are not held to the same evidentiary standards as criminal or even judicial civil proceedings. Hearsay is quite acceptable in administrative hearings." *In re Joseph A. Cross*, 617 A.2d 97, 102 (R.I. 1992) (quoting *Craig v. Pare*, 497 A.2d 316, 320 (R.I. 1985)) Thus, in *In re Joseph A. Cross*, the Supreme Court held that admission of a complaint letter against appellant in an administrative hearing was permissible because hearsay doctrines were not applicable. See id. Similarly, in the present case, traditional hearsay rules were not applicable and the hearsay evidence in question was clearly relevant to the proceedings. Consequently, this Court finds that the Board's decision to permit such hearsay testimony did not prejudice the Appellant's right to a fair and unbiased proceeding.

IV. Arbitrary and Capricious

Next, Appellant argues that in light of the evidence presented, the Board's decision is arbitrary and capricious. Appellant contends that the testimony of the State's witnesses directly contradict the Board's findings. In support of her argument, Appellant makes reference to certain statements by the State's witnesses during their testimony, and claims that they pose inconsistencies in the Board's case against her. Upon a thorough review of the Board's decision, this Court finds that the Board's determination that Appellant was guilty of unprofessional conduct in the practice of medicine was not arbitrary and capricious.

The Supreme Court of Rhode Island has repeatedly declared that the arbitrary and capricious standard of review is limited in scope and affords great deference to agency decisions. "Use of the arbitrary and capricious

standard means that reviewing courts will uphold administrative decisions ... as long as the administrative interpreters have acted within their authority to make such decisions and their decisions were rational, logical and supported by substantial evidence." *Domingo Goncalves v. NMU Pension Trust*, 818 A.2d 678, 682-83 (R.I. 2003) (citing *Doyle v. Paul Revere Life Insurance Co.*, 144 F.3d 181, 184 (1st Cir. 1998)). *See also Evan J. Connor v. Paul Bjorklund, et al.*, 833 A.2d 825, 2003 R.I. LEXIS 197, No. 2002-720-A., slip op. at 5 (R.I., filed October 31, 2003) (here in a civil action, the Rhode Island Supreme Court refused "to second-guess the trial justice's credibility findings" where the defendants cited "certain discrepancies between plaintiff's trial testimony and other evidence contained in the record").

In applying the arbitrary and capricious standard to the present case, this Court recognizes that under R.I. Gen. Laws § 5-37-5.1, the Board of Medical Licensure and Discipline is afforded wide discretion in making determinations as to what constitutes unprofessional conduct. The statute specifically reads that unprofessional conduct is not limited to the thirty one items specifically laid out in the statute and provides that the items mentioned "may be further defined by regulations established by board with the prior approval of the director." R.I. Gen. Laws § 5-37-5.1. In the case at bar, the Board heard from several witnesses including the mother and father of patients A, B, C, and D; the mother and father of patients E and F; Dr. Eden, an expert in the field of pediatrics; and the Appellant herself. Additionally, the Board reviewed 28 exhibits. Throughout the hearings, Appellant had numerous opportunities to call witnesses on her behalf and submit evidence to substantiate her claims. At no time

during the proceedings did Appellant attempt to do so. Moreover, the Board's decision includes a thorough analysis of its finding on each charge and explained in detail the evidence upon which they based their decision. Consequently, this Court finds that the Board's decision was not arbitrary or capricious.

V. Investigatory, Adjudicatory and Advisory Functions

The Appellant argues that Attorney Bruce McIntyre (McIntyre), who prosecuted the instant action, commingled functions as prosecutor and witness. Appellant contends that throughout the proceedings McIntyre injected questions that suggested McIntyre's firsthand knowledge of events and his own characterization of what had occurred. The Board counters by arguing McIntyre's role as prosecutor was wholly appropriate and did not unfairly taint the proceedings. The Board argues that this subject is thoroughly covered by Rule 3.7 of the Rhode Island Rules of Professional Conduct. The Board further contends that Appellant's attempt to prohibit McIntyre from acting as prosecutor in the present case is a harassing technique that is without merit. This Court finds that the Board's decision to allow Attorney Bruce McIntyre to prosecute the case was entirely proper.

In *El Gabri v. Rhode Island Bd. of Med. Licensure & Discipline*, 1998 R.I. Super. LEXIS 36, the Rhode Island Superior Court addressed a similar argument made by an appellant who was challenging the Board's decision to revoke his license. The appellant claimed that McIntyre's role as prosecutor and advisor to the Board was unconstitutional. The Superior Court rejected appellant's argument

and concluded that McIntyre's dual role as prosecutor and advisor to the Board was not violative of due process because nothing in the record demonstrated that McIntyre exercised influence over the Hearing Committee. *El Gabri*, 1998 R.I. Super. LEXIS 36 at *33-34. "Broadly speaking, the separation of functions that prevails in a modern administrative agency, allotting the prosecutorial function to a staff of attorneys or other personnel who will not participate in the eventual decision, is a common and recommended feature of American administrative enforcement activity." *La Petite Auberge v. Rhode Island Comm'n for Human Rights*, 419 A.2d at 284 (R.I. 1980). As was the appellant's argument in *El Gabri*, the argument made by the Appellant in the present case is without merit. There was nothing in the record to suggest that Attorney McIntyre exercised any influence over the Hearing Committee's decision. Moreover, the record demonstrates that McIntyre acted squarely within the boundaries of his role as prosecutor.

VI. Sanctions

Finally, during Court hearings, the Appellant argued that the sanction of indefinite suspension of her medical license was excessive in light of other medical board disciplinary sanctions that could have been imposed. The Board holds that suspension of Dr. Mills's license is the appropriate sanction until she submits to physical and psychiatric examinations conducted by medical professionals pre-approved by the Board. This Court finds that the Board did not err in using their discretion to reach what they deemed to be an appropriate sanction for Dr. Mills's unprofessional conduct.

This Court will not substitute its judgment for that of the Board concerning the appropriate discipline for the Appellant, as a Medical Board is in the best position to make determinations as to what constitutes an appropriate sanction. See *Jack Marrs, M.D. v. Michigan Board of Medicine*, 422 Mich. 688, 375 N.W.2d 321, 324 (Mich. 1985) (holding that the Court of Appeals erred in finding that the Board abused its discretion in imposing a one-year suspension for a doctor's failure to conform to prevailing minimum professional standards); see also *State of Rhode Island Department of Corrections v. Rhode Island Brotherhood of Correctional Officers*, 725 A.2d 296 (R.I. 1999) (declaring that an arbitrator improperly substituted his judgment for that of the director regarding what the proper disciplinary action should be). A Medical Board is empowered to impose discipline as it deems proper. *Bryce v. Board of Medical Quality Assur.*, 184 Cal. App. 3d 1471, 229 Cal. Rptr. 483 (Cal. App. 4 Dist. 1984). Regarding the imposition of discipline, "it is well settled that in reviewing the penalty imposed by an administrative body which is duly constituted to announce and enforce such penalties, neither a trial court nor an appellate court is free to substitute its own discretion as to the matter; nor can the reviewing court interfere with the imposition of a penalty by an administrative tribunal because in the court's own evaluation of the circumstances the penalty appears to be too harsh. Such interference will only be sanctioned when there is an arbitrary, capricious, or patently abusive exercise of discretion." *Shakin v. Board of Medical Examiners*, 254 Cal. App. 2d 102, 62 Cal. Rptr. 274 (Cal. App. 2nd Dist. 1967).

Thus, this Court finds that the suspension of Appellant's license was the appropriate sanction imposed in relation to

the well-supported findings of the Board and did not constitute an abuse of discretion. During oral arguments before this Court, the Appellant requested that this Court modify the sanction to include a provision that a psychiatrist of the Appellant's own choosing be permitted to attend the psychiatric examination the Board is requiring her to undergo before she can be considered for reinstatement. This Court's consideration of such a request would be inappropriate and would constitute a substitution of its judgment in place of the Board's as to the conditions of Appellant's reinstatement.

Conclusion

After review of the entire record, this Court finds the decision of the Board was supported by the reliable, probative, and substantial evidence in the record, and was not affected by error of law. Furthermore, this Court finds that the Board's decision was not arbitrary or capricious or an abuse of discretion. Thus, the substantial rights of Appellant have not been prejudiced. For the reasons stated herein, the decision of the Board, which finds the Appellant in violation of 1956 R.I.G.L. § 5-37-5.1, is affirmed. Counsel shall prepare an appropriate judgment for entry.